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In The

Supreme Court of the United States

October Term, 1968

No. 1166

RONALD GERHARD (as Claimant of 440 U. S. Gold Coins and One 1961 Chevrolet Automobile),

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in the above-entitled case on December 17, 1968.

Citations to Opinions Below

The opinion of the District Court is unreported and, in pertinent part, is printed at Appendix B hereto. The Court of Appeals delivered no opinion, merely affirming the District Court from the Bench at the conclusion of oral argument.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on December 17, 1968, Appendix B, infra.

Questions Presented

1. Can 12 U.S.C. § 95A (the Executive Order gold embargo) alone support a forefeiture action for smuggling U.S. gold coins, or is the government limited to seeking only a penal sanction pursuant thereto?

2. Do 12 U.S.C. § 95A (the Executive Order gold embargo) and 31 U.S.C. § 442 (The Gold Reserve Act), insofar as they prohibit Americans from owning gold, violate the Ninth Amendment to the Constitution of the United States?

Constitutional Provision and Statutes Involved

Involved in this case are the Ninth Amendment to the Constitution and 12 U.S.C. § 95A (the Executive Order gold embargo) and 31 U.S.C. § 442 (the Gold Reserve Act). They are set forth, in pertinent part, at Appendix A, infra.

Statement

Petitioner smuggled 440 U.S. Gold Coins into the United States from Canada in a 1961 Chevrolet automobile. The government commenced a libel proceeding against the coins and the automobile pursuant to the Gold Embargo and the Gold Reserve Act, and petitioner interposed a claim therefor.

Despite petitioner's contentions that the Gold Embargo was only a penal statute and that therefore no forefeiture could be sought under it alone, and that it and the Gold Reserve Act violated the Ninth Amendment's guaranty of a citizen's unenumerated right to own gold, the District Court granted the government the forfeiture that it sought.

The Second Circuit, at the conclusion of oral argument and from the Bench affirmed the District Court without opinion.

Reasons for Granting the Writ

The writ should be granted with regard to the first question presented because the Second Circuit has apparently perpetuated a serious error of federal law committed by the District Court, to wit: holding that under 12 U.S.C. § 95A, which is manifestly and exclusively a penal statute, a civil forfeiture can be had. This is especially erroneous in view of the fact that the forfeiture section of the Gold Reserve Act (31 U.S.C. § 443) specifically enumerates the various other sections of federal law for violation of which it may be availed to accomplish a forfeiture, and 12 U.S.C. § 95A is not one of those enumerated. The im-

portance of this enormous enlargement of federal power, particularly in the face of absolutely no statutory authorization therefor, is a matter of universal national importance.

Even more compelling reasons exist for granting the writ with regard to the second question presented.

The "money power" of Congress, specifically delegated to it by Article I, Section 8, Clauses 2 and 5, is limited to the power "To borrow money on the credit of the United States ... To coin money, regulate the value thereof, and of foreign coin..."

Although under the above this Court has held that Congress has the power to declare what is to be legal tender, establish a national currency either in coin or in paper, vary the amount of gold contained in the dollar and create a national bank, it has never held that our government has the power to make Americans into criminals for owning gold, nor that their gold can be confiscated.

Nor is there a power specifically delegated to Congress to that effect.

On this basis alone, the Petition herein should be granted.

Yet, there is another reason for granting the writ here, one even more compelling than the foregoing.

Not only has this Court never ruled on the

proscription of gold ownership — an issue of obvious crucial importance to every American today, in view of the world's current paper money debacle — but the Court has also never utilized exclusively as the tool of striking down unconstitutional legislation, the Ninth Amendment, which issue this case presents.

In Griswold v. Connecticut, 384 U.S. 479, this Court acknowledged that the Ninth Amendment does have meaning, that it is a recognition of the existence of unenumerated Constitutional rights, one being the right of married couples to use contraceptives.

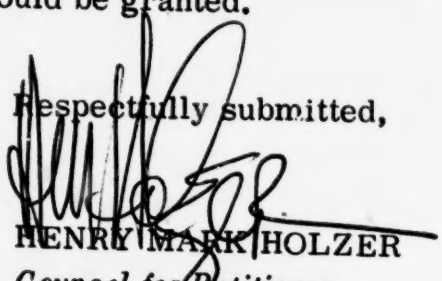
Thus, this case presents a doubly novel, and exceedingly crucial issue: Does the delegated money power constitutionally authorize and embrace the Gold Embargo's and Gold Reserve Act's prohibition on owning and/or possessing gold — particularly in view of the Ninth Amendment's reservation of all unenumerated rights to the people?

The answer to this question goes not only to the heart of the relation of the State and economics, but it also profoundly affects the meaning of the Ninth Amendment and the entire concept of unenumerated rights. In today's context of concern with individual rights on the one hand, and vast fiscal and monetary upheaval on the other, the instant case is one of great importance.

Conclusion

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,



HENRY MARK HOLZER
Counsel for Petitioner

March 10, 1969.

Appendix A

Ninth Amendment:

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Gold Embargo (12 U.S.C. § 95A):

> "...no person shall hold...any gold coin, gold bullion or gold certificates...except under license..."

Gold Reserve Act (31 U.S.C. § 442):

> 'The Secretary of the Treasury shall... prescribe the conditions under which gold may be acquired and held..."

Appendix B

Opinion, in pertinent part, of District Court:

> "...I see no merit in the defense contention that the Gold Embargo Act [sic] and the regulations promulgated pursuant thereto are violative of the Constitution of the United States..."

Judgment of Circuit Court:

* * *

> "ON CONSIDERATION WHEREOF, IT IS now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed ..."